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10/576,102	12/05/2006	Samuel Pruvot	Q94483	7427
23373 7590 12/28/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER BAINBRIDGE, ANDREW PHILIP				
ART UNIT		PAPER NUMBER		
3754				
NOTIFICATION DATE		DELIVERY MODE		
12/28/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/576,102

Applicant(s)

PRUVOT ET AL.

Examiner

ANDREW P. BAINBRIDGE

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the relationship between the dispensing unit 20, the over-molded neck seal 18, the reception profile 17, and the neck 19 must be shown properly, depending upon the response of the Applicant to the U.S.C. 101 rejection relating to the second embodiment (b) below. These features must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 1-15 are rejected under 35 U.S.C. 101** because the disclosed invention is inoperative and therefore lacks utility. The claims all depend from independent claims 1 and 13, which both claim that the claimed device must have at least one of two features, the second one being a "(b) a neck seal over molded on the neck of the reservoir." After reviewing the term "over molding" in an online- technical dictionary, and comparing it to the 71 references in class 222 that use the word "over molding" or a variant thereof, the Examiner believes that this embodiment is inoperative because the dispensing unit and neck seal can not be over-molded onto the reception profile and the reservoir as shown in figure 4.

First, "over molding" is a manufacturing process whereby two types of materials are molded to one another by either A) molding them both at the same time in the same mold or more commonly B) a hard material is cast first, and then it is placed in a mold, and then a second softer material is "over molded" over it to complete the mold, thereby creating a very good seal in between. A common example is a metal screwdriver bought in any hardware store that has some soft grip rubber over-molded onto it so as to seal well and fit like a glove on the metal shaft or hard plastic hilt. Second, after reviewing the specification provided by the Applicant, and further reviewing the original

set of claims examined, it appears that the Applicant contemplated this device being formed by a dual injection blow molding process (claim 7, original claims dated 12/5/2006). Third, after reviewing the drawings, it appears that the Applicant depicts that the dispensing unit 20 and the neck seal 18 are one piece (see figure 4), that the reservoir 10 and its neck 19 are a second piece, and finally that the reception profile 17 appears to be a third piece. Furthermore, the reservoir 10, 19 has a hole in it 15 for an orifice that will support a filter 50.

After reviewing these three observations, the Examiner does not believe that the drawings, the specification, and the claims can all be correct and also describe an operable device. The Examiner believes that this device, as written and described, will not work because 1) over molding is limited to *two materials* in one mold, and so if the reception profile 17 is a third material, then it is not an over molding process, aside from the obvious concern of whether it is two over molding operations in a row, one first to cast the reservoir 10, 19, then over mold the reception profile 17, and then finally do a second over molding process for the neck seal 18. 2) if the reception profile is actually the same material and is molded at the same time as the neck seal 18, the drawings are very misleading, and leave the average person with the mistaken belief that the reception profile 17 and the neck seal 18 are different materials. 3) the dispensing unit 20 and the neck seal 18 are shown as a unified piece, one single piece that is presumably over molded around the reservoir and neck 10, 19; this is next to impossible because the dispensing unit 20 is claimed in the original independent claim 1 to be a pump (original claim 1, line 2, dated 12/5/2006), and if so, there is no way to injection

mold all the little pieces that make up a working pump so that it will seat onto a reservoir 10, 19 and create a device that could work.

The Examiner is reduced to guessing at what the second embodiment actually entails. The Examiner's best guess is that the reservoir and neck 10, 19 is blow molded first so that an orifice 15 can be created. Then the dispensing unit 20 or pump 20 is fitted into the reservoir opening 19 as tightly as possible. This combined device is placed in an over molding device. Finally, the neck seal 19 and the reception profile 17 are over molded out a soft rubber that seals the neck very well.

In light of the inoperative status of the claims that depend from the "(B) embodiment, the claims were interpreted as best as possible in order to expedite the prosecution of this application.

The drawings, the specification, and the claims simply do not depict that best guess of the Examiner, and so the second embodiment "(b)" is rejected as inoperable, and a lack of rejections of the second embodiment based on prior art references should not be construed to indicate patentable subject matter.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 12 and 15 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "a neck seal formed by over molding the neck of the reservoir" (claim 15, lines 1-2) is redundant with and represents

a *double inclusion* of the independent claim 13's structural limitation of "(b) a neck seal formed by over molding on the neck of the reservoir". The phrase "a neck seal over molded on the neck of said reservoir" (claim 12, lines 1-2) is redundant with and represents a *double inclusion* of the independent claim 1's structural limitation of "'a neck seal over molded on the neck of said reservoir" (claim 1, line 8).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1, 4, 9-11 and 13-14 are rejected under 35 U.S.C. 102(b)** as being anticipated by US 6,354,469 (Pozzi).

7. Pozzi in figures 1-8 discloses a fluid product dispensing device (see figure 1) with a reservoir 15 made of plastic (col. 7, lines 65-68) to hold fluid product 20 by means of a manually actuated pump 3, 14, 33 that dispenses product 20 contained within the single piece reservoir 15 that has an orifice 19, 22, that is adapted to hold a press fitted filter 26 that allows air into the reservoir 15 via a check valve 17 when the pump 3, 14, 33 is actuated. Although Pozzi does not explicitly recite that its plastic container is made by injection blow molding

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. **Claims 1-2, 7-8, 12-13 and 15 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US 2003/0150882 (Bougamont et al.).

11. Bougamont in figures 2-2C discloses a fluid product dispenser (see figure 2A) with a reservoir R containing a fluid product (paragraph 0025) with a pump P that dispenses the product of the fluid reservoir with a dispensing head K to actuate the pump P the reservoir R is a single piece with (this is embodiment "b") a neck seal J with a raised ring or bump R (see figure 2A) for the seal J to serve as a reception profile for the seal J that is held in place by the ferrule D. Although Bougamont is not manufactured by an over molding process, this is not necessary to reject the above claims.

Applicant should note that the claims are directed to a device/product, not the process of making such. Even though product-by-process claims are limited by and defined by the process, determination of patentability is *based on the product itself*. The patentability of a product does not depend on its method of production. If the product in

the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Applicant claims "over moulded " in claims 1, 12-13 and 15, and the "dual injection blow molding" in claim 7. The manner in which the device is made/formed is given little or no weight. Further, it would have been obvious to form these products by these methods as they are well known manufacturing methods. The method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

12. **Claims 2-3 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Pozzi in view of US 4,830,284 (Maerte).

13. Pozzi has all of the elements of claims 2-3 except for the reservoir having a first radial projection and an axially aligned second radial projection that serve to retain the dispensing head as it actuates, and to create starting and stopping points for actuation. Maerte in figure 1 teaches a dispensing head 31 that is retained on the reservoir 12, 14, by a first radial projection 33 that is axially aligned with a second radial projection shoulder 12 that serve as starting and stopping points for the dispensing head's 31 actuation. It would be obvious to one of ordinary skill in the art to adapt Maerte to Pozzi because Maerte teaches a well understood and reliable way to control the actuation cycle of the dispenser.

14. **Claim 5 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Pozzi in view of US 2002/0130139 (Shiraishi et al.).

15. Pozzi has all of the elements of claim 5 except for the orifice that holds the filter is located in the sidewall of the reservoir. Shiraishi in figures 1-10 teaches a hole 4 in the sidewall of the reservoir 2 that serves to allow air to enter between the rigid outer container 21 and the pliable bag 22. It would be obvious to one of ordinary skill in the art to adapt the hole of Shiraishi to the Pozzi reservoir in order to re-locate the receiving hole for the inlet air filter to the sidewall of Pozzi because Shiraishi teaches the use of a location that is easier to protect from damage because it is not on the bottom of the reservoir and further it is protected to a point by the collar and pump apparatus of the Pozzi device.

16. **Claim 6 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Pozzi.

17. Pozzi explicitly has all of the elements of claim 6 including a reservoir made of synthetic material, but does not explicitly teach that the reservoir is made by injection blow molding.

Applicant should note that the claims are directed to a device/product, not the process of making such. Even though product-by-process claims are limited by and defined by the process, determination of patentability is *based on the product itself*. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Applicant claims that the reservoir is "made by injection blow molding" (claim 6, line 2). The manner in which the device is made/formed is given little or no weight. Further, it

would have been obvious to form this product by this method as it is a well known manufacturing method. The method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Response to Arguments

18. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW P. BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday to Thursday, 9:30 AM to 8:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. B./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754